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ABSTRACT

Do school dress codes written with the specific purpose of limiting individual dress preferences, including dress associated with gangs, infringe on speech freedoms granted by the First Amendment of the U.S. Constitution? Although the Supreme Court has extended its protection of political speech to nonverbal acts of communication, it has determined that students' choice of dress as a means of personal expression can be regulated by school officials. Over the last two decades, federal judges have divided evenly on the question of whether guarantees of privacy and free speech apply to teenagers' choice of dress. Some courts have insisted that the constitutional rights of individual students be balanced against the need for school officials to make reasonable health and safety regulations. School officials use the goals of their dress codes as a platform to support specific bans on gang and other inappropriate attire. A review of school dress codes reveals that most codes: (1) prohibit revealing attire that can cause embarrassment" and "graphics that are suggestively obscene or offensive on any garments"; (2) state that students may not disrupt the educational process by their personal grooming and cleanliness, or lack thereof; and (3) designate appropriate dress as that which is "within the limits of generally accepted community standards." Despite numerous court cases invoking the captive audience doctrine (i.e., not being forced to view messages that threaten or discomfort), placing limits on the personal expression of some students because others find their dress disgusting or the context unacceptable, closes off a productive avenue for debate and unnecessarily infringes on students' first amendment rights. (Forty-one footnotes are included.) (SAM)

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Panel Proposal

Contemporary Issues in Freedom of Expression

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School Dress Codes v. The First Amendment: Ganging Up On Student Attire

presented by

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Teenagers, clothes and gang behavior--what can school administrators do, or not do, with this volatile combination? Nation-wide educators and parents are watching their schools become increasingly an arena of serious and constant violence. No longer a concern limited to the inner city, emotional and physical safety of students has become an issue on all campuses. While violence stems from many causes--racial tensions, use of illegal drugs, lack of security at home,--school administrators consistently point to student dress[1] as an important element in propagating violence at school.

Few things are more personal than an individual's body and its appearance. Throughout a lifetime, individuals may create their own realities by managing their appearance--which includes developing ideas and actions--and acting toward other people on the basis of the meanings their appearance offers. Communication scholars argue that all behavior, both verbal and nonverbal, communicates. The U.S. Supreme Court (Court) has agreed, protecting speech that contains elements of non-verbal behavior such as leafleting,[2] picketing,[3] flag burning,[4] and contribution of money.[5] At one end of the spectrum is behavior that is entirely symbolic, that which functions only to create meanings inside of people. Such behavior is usually easy to identify because it employs traditional symbols of words, gestures, pictures, flags, and emblems. Wearing green, for example, on St. Patrick's day because one is Irish--or

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[1]Verb: the act of altering appearance; noun: the total arrangement of all outwardly detectable modifications of the body itself and all material objects added to it. Defined in M.E. Roach and K.E. Musa New Perspectives on the History of Western Dress.(New York: Nutriguides, 1980).

[2]Better Austin v. Keefe, 402 U.S. 415, 419 (1970) ruling peaceful distribution of pamphlets is protected by the First Amendment, and "the communication need not meet standards of acceptability."

[3]Thornhill v. Alabama, 310 U.S. 88 (1939) ruling peaceful picketing is protected.

[4]Texas v. Johnson, 491 U.S. 397 (1989).

[5]Buckley v. Valeo, 424 U.S. 1 (1976).

would like to be. On the other end of the spectrum is conduct that is not communicated as merely symbolic, but is made symbolic because of the manner in which it is communicated. A student's dress or hair length, for example, can be chosen for personal pleasure or style or to advertise an attitude or culture.[6]

If schoolchildren truly are not required to "shed their constitutional rights at the schoolhouse gate"[7] then why have school administrators nation-wide,[8] and in particular Anchorage School District in Anchorage, Alaska[9] taken one giant step backward by writing and enforcing stricter dress codes whose goal is to provide a safe environment for education by banning clothing or items associated with gangs or ganglike behavior? They are, as C. Edwin Baker would argue, "imagining the worst case scenarios and then proceeding to base analyses on the need to prevent it."[10]

The worst case scenarios of gang behavior and the violence associated with such, implies that without dress codes students will be inundated with offensive behavior. The assumption is that students will not be inclined to exhibit, engage, or be harmed by violent behavior if they do not see or wear clothing that glorifies gangs. Wearing an unapproved Raiders jacket or ball cap, therefore, sends a message that the student is a member of a gang (which may be the intent of the message) rather than a message that the student needs to stay warm, likes the team spirit of the Raiders, or was given the clothing by his grandmother and is obligated to wear it.

The basic question this essay attempts to answer is whether school dress codes written with the specific purpose of limiting individual dress preferences, including dress associated with gangs, infringe on speech freedoms granted to individuals by

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[6]See Franklyn S. Haiman, Speech and Law in a Free Society, (Chicago: University of Chicago Press, 1981): 30-38

[7]Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

[8]Appendix 1. List of schools who responded via telephone to questions about their school dress codes and/or sent copies of their school dress code.

[9]Appendix 2. Original dress code and changes made the last two summers.

[10]Human Liberty and Freedom of Speech,(Oxford University Press: New York, 1989): 35.

the First Amendment. Can school officials reconcile their responsibility to provide a safe environment to educate all with the First Amendment mandate that government has "no power to restrict expression because of its message, its ideas, its subject matter, or its content"?[11] Does a student have the right to select clothing for his or her body if others fear that selection of certain articles of clothing may suggest that the individual is a member of a gang, or lead to gang behavior and/or violence? Does a student have the right not to see what he or she considers an offensive article of clothing? If so, does the unwillingness of any student to receive a message outweigh another's right to offer such? Do school administrators have the power to write and enforce dress codes that permit certain types of clothing and deny other types? Are these codes to be uniform across the district, or left up to each individual school principal to decide based on the unique circumstances--and preferences--of the principal and his or her school? The answer to these questions requires examination of the literature on gang behavior, school dress codes, and First Amendment doctrine of specifically that of the captive audience.

School officials have a responsibility, often spelled out in their respective state constitutions, to provide an education for students in a safe environment. Suspension of students from school for violent action, including fighting, must be administered by school authorities. But administrative action, which often includes suspension for nonverbal speech acts which include, for example the wearing of red suspenders, ball caps, buttons, or "gang" colors, which have <u>not</u> led to violent conduct skids across the line of school safety concerns and crashes on the doorstep of the First Amendment.

Although the Court has extended its protection of political speech to nonverbal acts of communication, it has refused to decide for the nation as a whole whether there are elements of freedom of expression in the way public school students wear their

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[11]Police Dept. of Chicago v. Mosley, 408 U.S. 92, 95-96 (1972).

hair or clothing.[12] The Court has addressed other issues for students including protest,[13] and right to organize,[14] cautioning that authorities could interfere with the exercise of basic free-speech rights of elementary and secondary school students for good reason, such as to prevent disruption of the educational enterprise, but emphasizing that students in school are "persons" under the Constitution.

The Court's choice to let the issue lie with individual states has meant for students that their choice of dress and expression can be regulated by the current attitude of the officials in charge of their school. This attitude often reflects the perceived mind-set of the state and nation at large, giving preference to the majority viewpoint at the expense of minority expression. Changes may occur, as they did in a limited fashion during the late 1960s and early 1970s when schools eventually allowed boys to wear long hair and became more tolerant of dress. At least one court stated that students rights "will not be denied in deference to governmental benevolence or popular social theories."[15] During the Reagan years of the 1980s, hair styles for boys became more conservative and boys who chose to let their hair grow were barred from attending school, or forced to sit in a booth or other sequestered area facing a wall, in order to complete their studies.[16]

Over the last two decades, dozens of federal judges have carefully considered whether the guarantees of privacy and free speech apply to a teenager's choice of dress.[17] They have divided roughly evenly on the question, with those courts who

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[12]Rider v. Board of Education of Independent School District, 414 U.S. 1097 (1973)declining to review the U.S. Court of Appeals for the Tenth Circuit decision to uphold the suspension of three Pawnee Indians who were seventh graders insisting on their right to wear their hair in long braids in accordance with the traditions of their culture.

[13]*Tinker* at 503.

[14]Healy v. James, 408 U.S. 169 (1972) concerning the right of college students to form an on-campus organization which the school's administration disapproved.

[15]Breese v. Smith, 501 P2d 159, 167 (1973). Alaska case which upheld children's rights of expression under the Alaska Constitution, Art. 1, Sec. 1, and public education Art VII, Sec. 1.

[16]"Hey, Hairball! You're Gone!" Newsweek, 27 Nov. 89: 2Cp.79.

[17]*See* Pliscouv v. Holtville Unified School Dist., 411 F.Supp. 842 (1972) upholding the First Amendment rights of students that may "not be interfered with absent a forseeable material disruption in the orderly functioning of the classroom"; Jeffers v. Yuba City Unified School District, 319 F. Supp. 368 (1970) ruling

have struck down arbitrary rules insisting on a balance of the rights of the student against the need of the school to make reasonable health and safety regulations. Thomas Tedford writes that the "result is a continuing division among the twelve circuits of the federal courts of appeal, for some circuits have discovered constitutional issues whereas others have not."[18]

Theorists George Herbert Mead and Herbert Blumer suggest that individuals come to social contexts with a storehouse of meanings, and this storehouse is developed and refined over time based on social interactions. Individuals use the cues provided by the appearance of others, interpret these cues, and attempt to organize their actions toward others accordingly.[19] Meanings derived from appearance, therefore, are not passively received, on the contrary, each individual must learn, discover, or develop a meaning on his or her own. If every action that an individual takes, or fails to take, is behavior capable of being understood as communication, the question begging to be answered is: what happens when individuals attempt to offer their ideas and actions by choosing dress which falls out of mainstream acceptance?

There is no argument that adolescents are stealing the clothes off of other's backs, or in extreme instances, killing their peers for Nike shoes and Triple F.A.T Goose parkas. "Dressing for success has never been so risky. The combination of crack-quickened tempers, availability of guns and the flashy clothes of the drug culture

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"students who were suspended for violating hair regulation were not deprived of the right to privacy or personal liberty under the First Amendment; McCarthy v. Fletcher, 254 Cal. Rptr 714, 207 C.A. 3d 130, review denied ruling "power and discretion granted to school boards must be exercised in manner which comports with transcendent imperatives of First Amendment"; Montolvo v. Madera Unified School District Board of Education 98 Cal. Rptr. 593, 21 C.A. 3d 323 ruling that when First Amendment rights are involved, the court gives little weight to expert testimony expressing fears of disruption, disturbance, divisiveness, and interferences with educational process where opinions are not based on actual incidents"; Meyers v. Dracta Unified Hight School, 75 Cal. Rptr. 68, 269 A.A.2d 549 (1969) ruling "student long hair style, like a beard, is entitled to First Amendment protection;" State v. McKinnon, 558 P.2d 781, 88 Wash 2d 75 (1977) ruling "students do not leave their constitutional rights when they enter the school grounds."

[18]Freedom of Speech in the United States. (New York: Random House,1985): 296

[19]Symbolic Interactionism: Perspective and Method. (Englewood Cliffs: Prentice-Hall, 1969).

has taken fashion awareness to a wicked level," wrote one author in a popular news magazine.[20] While very little of this violence is taking place in the schoolyard, school officials are not taking any chances. They are reacting swiftly to the media's coverage and police information which details an increase in armed robbery and shootings over clothing and other gang dress by establishing dress codes. Many schools, like Crenshaw High School in Los Angeles have banned gang dress which includes bandannas and dangling earrings for boys. Other schools have banned excessive jewelry, shearling coats and decorative gold caps for teeth.[21] In January 1990, the Detroit Board of Education required all of its 259 schools to design and enforce their own mandatory dress codes. During the summer of 1991, the Anchorage school district changed its dress code to include a sentence declaring "students may not wear clothing or items that are associated with gangs or gang like groups."[22]

Characteristics of gangs are certainly not limited to dress. Scholars and police investigators have recorded everything from the fact that white gangs (known as "stoners" or "heavy metalers") perform Satanic rituals, to the importance of the neighborhood (known as "the 'hood" to Hispanics). Certainly a gang's name (Miami's Mazda Boys who steal Mazda cars) is important, as is its graffiti, gang dress and colors. Today's gang member may wear baggy khaki pants riding low on the hips (known as "busting a sag"), patterns shaved into their heads, bandannas or colored rags hanging from their back pockets, or untucked flannel shirts. Their dress sends a message to others of who they are or who they want to be. They persist in using dress as a message even though it assists police in keeping track of them.[23]

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[20]"Street Crimes of Fashion: Bloodshed over Clothes," Newsweek 5 March 1990: 58.
[21]id.
[22]450 Student Rights and Responsibilities. Attachment B, 10. Freedom of Symbolic Expression, 10.a "Student Dress Code."
[23]"A Dossier on Gang Subcultures," Washington Congressional Quarterly, Inc., Vol 1, issue 22: 11 Oct. 91: 767.

Despite the fact that there is obviously more to gang behavior than dress, school officials are targeting dress as the focal point in determining gang behavior. They are using the goals of their dress codes as a platform to support specific ban of gang, and other "inappropriate" attire. A review of school dress codes nation-wide reveals three distinct goals. First is the goal of individual preference. Most school districts have recognized that a student's dress and grooming is a "manifestation of personal style and individual preference."[24] Administrators, apparently, will not interfere with the right of the students and their parents to make decisions regarding their appearance except when their choices affect the educational program of the school or the health and safety of others. Most codes include a discussion of "tight fitting, sheer, brief, low cut, or revealing attire that can cause embarrassment or indecency," and "graphics that are suggestively obscene or offensive on any garments,"[25] as examples of unacceptable dress that would violate the health or safety of others.

A second goal which emerges is that of personal hygiene, which again hinges on whether the student will disrupt the educational process by his personal grooming and cleanliness, or lack thereof. Again, most codes include language such as "Good grooming promotes pride and good behavior"[26] or "Each student shall attend school clothed in a manner which is clean."[27] School officials interviewed state that students are rarely sent home for poor grooming, most are given clean clothes available at school, or an opportunity to take a shower or wash their clothes.

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[24]Avonworth School District, Pittsburgh, Pa., 221 Dress and Grooming, 1 "Purpose."
[25]East Orange Board of Education, East Orange, N.J., File Code: 5132 "Student Dress Code",June 20, 1989.
[26]Berryhill High School, Tulsa, OK., "Dress Code."
[27]Anchorage School Dist, Anchorage, AK, 450 Student Rights and Responsibilities, 10. "Freedom of Symbolic Expression, 10.a. "Student Dress Code."

A third and perhaps the most important, goal is whether the student's dress and grooming "are within the limits of generally accepted community standards."[28] School Boards are supporting School District Administrator's decisions to allow individual school officials to set the community standards for their schools. Some school officials, therefore, within a district may require uniforms for its students while others may allow shorts or more casual clothes--and both may claim to support existing community standards. The dress code of the Oakland Unified School District, for example, relies on the mandate provided by Article 1, section 28(c) of the California Constitution which states: "All students and staff of public primary, elementary, junior high and senior high schools have the inalieable right to attend campuses which are safe, secure and peaceful." The Board of Education, therefore, has an obligation, legally and morally, to establish a policy which "insures that schools are a safe and secure learning environment free from violence or the threats of violence and intimidation by gangs, gang regalia, gang gestures, weapons, the sale of dangerous and illegal drugs, drug or alcohol use, profanity, and bigotry and/or intolerance against people on the basis of race, ethnicity, religion, sex, or sexual preference." The code also states that students who dress in an "appropriate manner" (without defining what appropriate means) "make a statement by their appearance that they are in school to learn and that their behavior will be consistent with the serious goals of an academic environment." The code lays out specific articles of dress which may not be worn,--T-shirts with designs or wording that demeans people on the basis of race or sex or jewelry which incorporates swastikas; smooth fabric jogging suits, "which are a leading symbol worn by gang members and drug dealers." In addition, students are not allowed to wear clothing designating membership in non-school organizations but official school sweaters jackets, athletic suits, ROTC uniforms, etc. are permitted.[29]

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[28]Clark County School District, Las Vegas, Nevada, "Dress and Appearance" 5131.
[29]Administrative Bulletin 6040, November 1991, pg. 1.

Of these three goals, the desire for a well-groomed student seems to run the least risk of interfering with a student's free speech protection. Poor grooming habits (assuming long hair and/or braids for boys is not considered poor grooming) is probably not speech--symbolic or otherwise. The student's individual preference, however, when it comes in conflict with the school's community standards and safety responsibility would appear to create problems for speech rights. An examination of Anchorage's dress code can shed some light on the difficulties administrators face when balancing the rights of student speech with the responsibility of a safe place for education.

The Anchorage dress code does not list, as the Oakland school district and others have, what specific articles of dress are banned. The code is broadly written[30] to allow each principal to determine what dress is acceptable for his or her school as long as the district's ban of gang clothing and items are prohibited. In-service training provided information on the procedure for reporting dress code violations to secondary education administrators, who would notify the school board, who would handle the final decision of whether the behavior was gang related or not. Few other characteristics of gangs were discussed, but principals were able to discuss among themselves at district meetings some of the particular problems that arose within their schools with the enforcement of the new code. In general, most of the principals agreed that it was difficult last year to determine what is "gang-like behavior" or "gang-like groups." After a one year effort, the district dropped the phrase "gang-like groups" from the code. The phrase "gangs," however, remains and with it the difficult challenge of supporting speech choice from inappropriate action.

Anchorage's secondary schools are a mixed bag of choices. Students who have had a difficult time meeting the attendance and education requirement of the

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[30] See Appendix 2.

district's six more traditional high schools scattered throughout the city and outlying area may choose to attend SAVE I or SAVE II, schools that give students a second chance--with very strict requirements. Students who choose to get a head start on the work world may attend King Career Center. Students who have had problems with law enforcement authorities may attend McLaughlin high school or REACH. Like most schools across the nation, each school boasts of its own distinct student population which reflects both the geographic and economic location as well as the school's curriculum choices.

Principals of each of the schools have the freedom to decide what is appropriate dress for his or her students. The code allows them to reinforce their requirements of good grooming and dress. Many stated that the behavior of students is "better" when the dress is appropriate--clean, no torn clothing, and "all body parts covered." All principals had no difficulty prohibiting clothing worn in a suggestive manner or clothing offering suggestive, or pornographic phrases. Each had different ways of handling the issue, some would provide a new t-shirt, others would allow the student to cover the message or turn the shirt inside out, and still others would call the parent to come to the school and take the child home to change. Principals in charge of a smaller number of students have an advantage because they are able to work-one-on-one with a student to arrange a clothing "compromise." Some principals may decide to institute total bans, for example, on baseball caps because the students grab them from the heads of others or throw them in the hallways, thereby creating a safety issue. Another principal, however, might not ban all ball caps, only those with an **X** or other racial or gang symbol.

Many of the principals were adamant about banning specific items that are symbols of racial hatred--swastikas, red suspenders--or gang dress--colored bandannas, black clothing. While they may be tolerant up to a point with students' "testing," behavior, they are quick to enforce the code if they suspect school safety

problems. One Junior High principal suspended a student for wearing a button that displayed a racist message. He stated that the "button caused the suspension--not the behavior" because the student "refused to give up racist ideas." Despite his attempts to educate the student and her friends through counselors, special programs, support groups and leadership workshops, she continued to wear the button. He stated that any symbols or dress that sends a message "hateful to minorities" will not be tolerated in his school.

While some expressed discomfort in deciding what was a "gang" most focused on the actual behavior of the student, irrespective of the dress. Some principals have suspended students, for example, who attend school wearing red suspenders, leather boots and a shaved head, citing protection for the safety of the "skinhead" and other students. Most principals stated that they would speak with the student wearing skinhead attire, and his or her peers and teachers prior to taking discipline procedures. At least one principal during the 1991-92 school year had a difficult decision to make regarding a student who had improved his school track record during his high school years, but had taken to dressing in the attire of skinheads his Senior year. While his peers and teachers were convinced he just wanted to "dress that way," had not made any statements that offended anyone, and had kept his grades and job responsibilities up to school standards, the principal took seriously the school dress code mandate that "students may not wear clothing or items that are associated with gangs."[31] After meeting with the principal, the student changed his dress choice and was allowed to stay in school and graduate.

Currently a principal at another high school has used the dress code and other school policies to suspend students dressed as skinheads. Several of these students have chosen to go beyond merely wearing the dress to blocking hallways and

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[31]Freedom of Symbolic Expression 10.a "Student Dress Code

engaging in fights which has resulted in disciplinary actions.[32] Physically prohibiting other students from attending class or fighting with other students is behavior which warrants discipline. Students who "show up" on campus dressed as skinheads are immediately sent home.

Most of the principals interviewed see their roles as a "firefighter" for angry students. They watch for behavior that takes the dress out of passive, nonverbal speech and moves it into action before enforcing disciplinary actions. All indicated that it is the behavior--and they generally do not associate dress with behavior--which they discipline. They are willing to tolerate students individual preferences for dress as long as it meets the grooming standards of the school (which shows that students take pride in themselves and their school) and that their preferences do not interfere with school safety goals. A few state that the code is "a very good deterrent" in preventing gang behavior, others say they have no reason to use the code, and yet others feel the code leaves too much choice up to the principals for deciding a student's fate..

The actions of Anchorage principals mirror those of the rest of the nation. Tolerance for student dress varies with the school and individual in charge of administering the code. When questioned about certain First Amendment issues that may arise when enforcing dress codes, most school officials are insistent that there is a "time, place and manner" for everything--and school may not be the place. They suggest that students are held "captive" at the location and look to administrators for education and safety. Despite numerous Court cases invoking the captive audience doctrine,[33] a clear definition of this doctrine has not been articulated. One conclusion

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[32]Pamela Doto, "Service High's Skinheads, Blacks Clash," Anchorage Daily News,7 Oct. 1992, A1.

[33]*See* FCC v. Pacifica Foundation, 438 US. 726, 748 (1978) prohibiting "seven dirty words" during radio drive time; Bolger v. Youngs Drug Products Corp., 463 U.S. 60 (1983) ruling unconstitutional a prohibition on the mailing of unsolicited advertisements for contraceptives to the home; Consolidated Edison Co. v. Public Service Commission, 447 U.S. 530 (1980) allowing billing inserts lauding nuclear power to be placed in a utility company's bills; Frisby v. Schultz, 487 U.S. 474 (1988) upholding a city ordinance against "focused" residential picketing; Erznoznik v. City of Jacksonville, 422 U.S. 205, 210 (1975)

which can be drawn, however, is that the captive audience doctrine is more likely to be invoked to restrict speech when the individual is viewed as captive in a home rather than on the street, and if the speech is spoken, rather than written.[34]

Individuals encounter daily unwanted messages. Because of the inevitability of undesired speech outside the protection of our home, the burden is placed on the recipient of information to avoid "further bombardment of his sensibilities."[35] In some instances the Court has ruled that the viewer, when outside the home, has a responsibility to turn away or avert his or her eyes to the message. This is almost always the case if the message is written. Marcy Strauss cautions that regulators and courts must not confuse "captivity in a *place* with being captive to *speech.*"[36] Students, for example, could solve the problem of unwanted dress messages by requesting different seat assignments in classrooms, selecting lockers in a different hallway, or turning their head at the first glance of an offensive message. While some students will certainly find some dress messages offensive, others may be more willing viewers and would presumably not want their right to view messages denied because the sender has been suspended from school. The question becomes: what is a reasonable burden in the context of school classrooms, cafeterias, libraries or hallways? Is it too much for students to glance at an offensive mural or poster and to turn away? Is it too difficult for those who don't want to read an offensive button to not get close enough to the student to do so? Should the burden of turning one's head when passing someone in the hallway wearing red suspenders and a shaved head outweigh the right of the individual to use dress as a message?

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invalidating an ordinance prohibiting the showing of films containing nudity by drive-in theaters whose screens were visible from a public street; Cohen v. California, 403 U.S. 15 (1971) refusal to find persons in a courthouse captive to the message "Fuck the Draft," written on a jacket.

[34]Franklin S. Haiman, "Speech v. Privacy: Is There a Right Not to Be Spoken To?" Northwest University Law Review. 67 (1972):153.

[35]*Erznoznik* at 211; Lehman v. City of Shaker Heights, 418 U.S. 298, 320-21 (1974) (Brennan, J., dissenting).

[36]"Redefining the Captive Audience Doctrine," Hastings Constitutional Law Quarterly, 19 (1991): 98.

Strauss argues that the captive audience doctrine is "an elastic theory that could expand to curtail most free expression rights." The audience, all too often, acquires "veto power," and the doctrine could be used to prohibit freedom of speech, particularly with "respect to unorthodox views."[37] School officials who regulate dress messages, i.e deny gang colors, accessories, allow "clean-cut" clothing, violate content-neutral requirements. They are deciding that some messages are more worthy than others. In banning gang dress, school officials have not demonstrated that there is no less restrictive means available to achieve their objective of a safe educational environment.

The Court has ruled that schools may restrict the speech of students who urge the use of drugs to others,[38]--and could presumably ban the wearing of dress advocating such. But clothing that does not identify an illegal or pornographic message, should not be banned. Banning dress--or verbal speech--of students who advocate unpopular ideas in a place meant for educational purposes strikes at the very heart of learning and the First Amendment.

Those students who ask to be "left alone" and not be forced to view messages that may cause them discomfort are failing to participate in the democratic process. The right to make choices is essential if students are going to be free thinking, independent, autonomous individuals.[39] Forced listening or viewing of a prescribed, sanitized message removes decision-making choices for the student. Students who do not see the student wearing red suspenders, because the student, if he or she chooses to wear that dress, has been banned from campus, cannot make a decision for themselves to speak, or not to speak, to the student about the meaning of his or her

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[37]104.

[38]Bethel School Dist No. 403 v. Fraser, 478 U.S. 675 (1986).

[39]David L. Bazelon, "Probing Privacy,"12 Gonzoga Law Review 587, 589 (1977) (privacy includes right to uphold each person's right to be different, to have opinions of his or her own, and to make choices for himself or herself).

red suspenders. Is the student's right to choose to see or not to see certain messages one worth protecting? If we believe that speech is powerful, and that dress is a manifestation of speech, than this form of communication has the opportunity to inform, convince, persuade and possibly hurt everyone.

To provide for greater freedom we should permit the predictably occasional offensive uses of that freedom. When students send a message of dress or hairstyle they are telling others that their values and preferences have changed, or that their values and preferences have been suppressed. Regulations are created to maintain the status quo--and to prevent people from creating a new status quo. "When people feel compelled to engage in disruptive activity, the greatest need is for the government to respond appropriately to this dissatisfaction, not to suppress the dissidents,"[40] writes Baker. Public schools have legitimate interests in the free and open communication of ideas; they are in the learning business. School administrators are charged with the responsibility to provide an atmosphere of education for all. This responsibility includes allowing students to speak freely on issues of the day, to question ideas and concepts they are unsure--or too sure--about, and to wear clothing that may represent statements that are designed to shock or offend. School administrators do not have the right to decide for others which speakers are dressed appropriately and therefore fit to be heard and deserve to take place; they should exhibit greater, not less, freedom of expression than prevails in society at large.

Learning is not a spectator sport. Students have an obligation to attend classes and attend to discussions that will increase their knowledge--no matter how painful that may be. To limit the communication of some, because others find the dress message disgusting or the context unacceptable, dead-ends an avenue for debate. Dress codes may keep unwelcome attire out of the schools, and ultimately suppress

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[40] 184.

what students think. Such a prescribed standard for speech ignores the uniqueness of speech and each person's interest in his or her personal selection of dress. Prohibiting dress will not solve the problems of cultural, economic, or educational differences. To force students to dress in lock-step fashion--as is evidenced by those schools advocating wearing of uniforms and those who determine from month to month what is acceptable "because clothing that is neutral one month may suddenly cause trouble the next"[41]--because of the effect dress may have on their peers is to deny an opportunity for exploring the meaning of equality and understanding. More speech, rich in the vibrant colors, textures, and meanings, dress can provide, is the answer, not less.

[41]School Dress Code, Los Virgenes Unified School District, Los Angeles, Ca; p. 13.

Appendix I

Anchorage School District

Atlanta School District

Avonworth School District

Berryhill Public Schools

Birmingham School District

Boston School District

Charleston School District

Charlotte School District

Chicago School District

Clark County School District

Dallas Independent School District

Denver School District

Detroit School District

District of Columbia Public Schools

East Orange School District

Houston School District

Jackson Public School District

Memphis School District

Minneapolis School District

Nashville School District

New Haven School District

New Orleans School District

New York City School Districts

North Providence School Department

Oakland Unified School District

Philadelphia School District

Phoenix School District

Portland Public Schools

Salt Lake City School District

San Antonio Independent School District

San Francisco School District

Seattle School District

St. Louis School District

Appendix II

Anchorage School District Statement of Students Rights and Responsibilities

Freedom of Symbolic Expression (Prior to August 1991)

10.a Dress and Appearance. A student shall be free to determine his/her dress and grooming as he/she sees fit, as long as his/her appearance does not substantially and directly endanger physical health or safety, damage property, or seriously and immediately disrupt the activities of others. A student shall not be barred from extracurricular activities because of hair length except in the case of ROTC.

10.b Buttons and Armbands. Students may wear or display buttons, armbands, flags decals and other badges of symbolic expression, unless the manner of expression materially or substantially interferes with the orderly process of the school or the rights of others.

Anchorage School District Statement of Students Rights and Responsibilities

10. Freedom of Symbolic Expression (After August 1991)

10.a Student Dress Code--Each student shall attend school clothed in a manner which is clean, not hazardous to the safety of him/herself or others, and which does not detract from the required educational environment. Students may not wear clothing or items athat are associated with gangs or gang like groups. Students who do will be excluded from school until such time that they cease wearing the clothing or items to school or school events.

10.b Buttons and Armbands. Students may wear or display buttons, armbands, flags decals and other badges of symbolic expression, unless the manner of expression materially or substantially interferes with the orderly process of the school or the rights of others. Items that are associated with gangs, or gang like groups, are deemed in and of themselves to substantially interfere with the orderly process of school.

Freedom of Symbolic Expression (Policy since June 1992)

10.a Student Dress Code--Each student shall attend school clothed in a manner which is clean, not hazardous to the safety of him/herself or others, and which does not detract from the required educational environment. Students may not wear clothing or items that are associated with gangs or gang like groups. Students who do will be excluded from school until such time that they cease wearing the clothing or items to school or school events.

10.b Buttons and Armbands. Students may wear or display buttons, armbands, flags decals and other badges of symbolic expression, unless the manner of expression materially or substantially interferes with the orderly process of the school or the rights of others. tems that are associated with gangs are deemed in and of themselves to substantially interfere with the orderly process of school